

In the High Court of Punjab and Haryana, at Chandigarh.

R.S.A. No. 98 of 2004

Date of Decision: 11.12.2007

Harbans Singh

...Appellant

Versus

M/s Arjan Dass Jiwan Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. S.K.Chawla, Advocate
for the appellant.

Mr. J.R.Mittal, Senior Advocate
with Mr.Kashmir Singh, Advocate
for the respondent.

RAJESH BINDAL, J.

The defendant is in appeal before this Court against the judgement and decree passed by learned lower Appellate Court whereby the suit filed by the respondent/plaintiff for recovery of Rs. 1,00,000/- along with interest, was decreed.

The respondent/plaintiff, who was carrying on the business of Commission Agent, had filed a suit for recovery of Rs. 1,72,000/- against the appellant/defendant on account of principal and interest. It was claimed that the appellant/defendant had taken a loan of Rs. 1,00,000/- from the respondent/plaintiff on December 10, 1997, which was duly acknowledged under his signatures wherein even a sum of Rs. 1,00,000/- was also mentioned in Punjabi. Though the acknowledgement was signed in English. The loan was taken with the promise that the appellant/defendant would bring his crop in the shop of respondent/plaintiff for selling the same and get the same adjusted against the sale proceeds thereof. However, when the same

was not done by him, the respondent/plaintiff filed the suit for recovery.

Learned trial Court dismissed the suit filed by the respondent/plaintiff primarily by relying upon the report of the Handwriting Expert produced by the appellant/defendant, namely, DW-4 Navdeep Gupta. Further that the appellant though is stated to have signed Bahi in English did not know to read and write English, accordingly, the signatures were forged. However, the first Appellate Court again examined the evidence on record deeply and reversed the judgement and decree of the trial Court. This is how the matter is in appeal before this Court.

As far as the aspect of appellant's knowing English, the respondent/plaintiff had produced on record in the form of admission register of the School from where the appellant had passed his eighth class examination by studying Punjabi, Hindi, Social Studies, Science, English and Mathematics. In his appeal, the appellant did not deny the fact that he studied in School, rather technical pleas were sought to be raised to discard the evidence from the School. No effort was made by the appellant to dislodge the evidence produced by the respondent to the effect that he had studied in the School. Accordingly, learned lower Appellate Court found that the claim made by the appellant that he did not know English was falsified.

While finding discrepancies in the evidence led by DW.4 Navdeep Gupta, Handwriting Expert, learned lower Appellate Court found that he had merely enlarged the negatives supplied to him by the appellant/defendant through his counsel. In his cross-examination, he admitted that he never inspected the file of the Court nor took the photographs himself. He further admitted in his cross-examination that he had not seen the Court file. He was not even aware of the report given by another Expert, namely Anil Kumar Gupta. As this witness produced by the appellant did not even peruse the report filed by another expert witness, which was already on record and had not been able to point out any discrepancies therein. The learned lower Appellate Court considered it appropriate to rely upon the report of another expert witness and discard his report as due process for examination of the handwriting had not been followed by him, keeping in view the fact that he had not even inspected the file and taken the photographs himself and he even failed to compare signatures of the appellant/defendant with different handwriting and signatures as compared and opined by another witness, namely, Anil Kumar Gupta. The entries in the books of accounts, which are produced in evidence as Ex.P8 also did not show any abnormality. The books

of accounts were maintained by the respondent/plaintiff in due course of business. The entry was duly posted in the ledger at the relevant time.

In view of my above discussions and perusing the material on record, I do not find any illegality has been committed by the lower Appellate Court in appreciating the evidence led by the parties. The view expressed by learned lower Appellate Court cannot possibly be said to be perverse.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

(Rajesh Bindal)
Judge

December 11, 2007
“DK”